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Supreme Court, U.S.
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No. 03-1500

IN THE

Supreme Court of the United States

THOMAS VAN ORDEN,

Petitioner,

v.

RICK PERRY, in his Official Capacity as Governor of Texas and Chairman, State Preservation Board, *et al.*,

Respondents.

CORRECTED COPY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE FAITH AND ACTION, INSTITUTE IN BASIC LIFE PRINCIPLES, INTERNATIONAL REAPERS FOUNDATION, THE NATIONAL CLERGY COUNCIL, AND COMMITTEE OF CONCERNED CITIZENS IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

	Page
TABLE OF CITED AUTHORITIES	ii
TABLE OF APPENDICES	viii
INTEREST OF AMICI	1
SUMMARY	1
INTRODUCTION	2
OUR PHILOSOPHY OF GOVERNMENT IS GOD'S MORAL LAW	4
THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION ARE ONE HARMONIOUS DOCUMENT	9
THE "WALL" IS IN THE WRONG PLACE	11
THE WARNING	14
CONCLUSION AND SOLUTION	24

TABLE OF CITED AUTHORITIES

CASES:	Page
Abington v. Schempp, 374 U.S. 203 (1963)	2
Alleghany v. ACLU, 492 U.S. 573 (1989)	2
Cohen vs. California, 403 U.S. 15 (1971)	19
Commonwealth v. Jesse Sharpless and Others, 2 Surge. & R. 91 (Sup. Ct. Penn.1815)	19
Dread Scott v. Sandford, 60 U.S. 393 (How.) (1856)	21
Engle v. Vitale 370 U.S. 421 (1962)	3
Erznoznik vs. City of Jacksonville, 422 U.S. 205 (1975)	19
Everson v. Board of Education, 330 U.S.1 (1947) ...	2, 4
Grove vs. Mead School District, 753 F. 2nd 1528 (9th Cir. 1985), *cert. denied*, 474 U.S. 826 18	18
Gulf, Colorado and Santa Fe Railroad Co. v. Ellis, 165 U.S. 150 (1897)	10
Marbury v. Madison, 1 Cranch 137 (U.S. 1803) ...	13
McCreary v. ACLU, No.03-1693	1, 5
McGowan v. State of Maryland, 366 U.S. 420 (1961)	10

Cited Authorities

	Page
People v. Ruggles, 8 Johns 545 (Sup. Ct. NY. 1811)	18, 19
Stone v. Graham, 449 U.S. 39 (1980)	20
Vidal vs. Gerard's Executors, 43 U.S. 126 (1844)	8
Wallace v. Jafree, 472 U.S. 38 (1985)	2
Williams v. Vidmar, No.CO44946, USDC, N. Dist. San Jose Div.	2
FOUNDING DOCUMENTS:	
Declaration of Independence	*passim*
First Amendment	*passim*
Fourteenth Amendment	19
OTHER AUTHORITIES:	
Abraham Lincoln, The Works of Abraham Lincoln: Speeches and Debates, John H. Clifford, Editor (New York: the University Society Inc., 1908), Vol. III, pp. 126-127, August 17, 1858	11
Alexander Hamilton, *The Papers of Alexander Hamilton*, Harold C. Syrett, Editor (New York: Columbus University Press, 1961), Vol. I , p. 87, February 23, 1775	7,10

Cited Authorities

Page

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Benjamin Franklin, *The Works of Benjamin Franklin*, Jared Sparks, Editor (Boston: Tappan, Whitmore and Mason, 1840) 18

Bernard C. Steiner, *The Life and Correspondence of James McHenry* (Cleveland: The Boroughs Bros. Co., 1907), p. 475, Charles Carroll to James McHenry on November 4, 1800 17

Chandler Robbins, *A Sermon Preached before His Excellency John Hancock, Governor et.al.* (Boston: Thomas Adams, 1791), p. 32 16

Connecticut Courant, June 7, 1802, p. 3 17

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Page

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Hamilton, *Papers*, Vol. I p. 87, February 23, 1775, quoting from Blackstone 5

Henry, *Correspondence*, Vol. II, p. 185, from George Mason to Patrick Henry, May 6, 1783 18

James Iredell's Charge to the Grand Jury in the *Case of Fries* [9 Fed. Cas. No. 5,126 (C. C. D. Pa. 1799) 6

James Madison, *The Papers of James Madison*, Henry Gilpin, Editor (Washington: Langtree and O'Sullivan, 1840), Vol.III p. 1391, August 22, 1787 16

James Wilson, *The Works of the Honorable James Wilson*, Bird Wilson, Editor (Philadelphia: Lorenzo Press, 1804) Vol. 1, pp. 103-105, "Of the General Principles of Law and Obligation." 5, 7

John Adams, *A Defense of the Constitution of Government of the United States of America* (Philadelphia: William Young, 1797), Vol. III, p. 217 6

John Jay, *The Life of John Jay.*, William J., Editor (New York: J& J. Harper, 1833), Vol. II, p. 385 6

Cited Authorities

	Page
John Quincy Adams, *Letters. . . . To His Son*, p. 61	7
John Quincy Adams, *Letters. . . . To His Son*, pp. 70-71	7
John Quincy Adams, *The Jubilee of the Constitution* (New York: Samuel Coleman, 1839), p. 54	11
New York Historical Society on April 30, 1839 . . .	9
Noah Webster, *Collection of Papers*, pp. to 91-292, from his"Reply to a Letter of David McClure on the Subject of the Proper Course of Study in the Girard College, Philadelphia. New Haven, Nuremberg trial record	8
Reports of Committees of the House, p. 8	15
Rufus King, *The Life and Correspondence of Rufus King*, Charles R. King, Editor (New York: G.P. Putnam's Sons, 1900), Vol. VI, p. 276	7
Samuel Adams, *The Writings of Samuel Adams*, Harry Alonzo Cushing, Editor (New York: G.P. Putnam's Sons, 1907), Volition, p. 286, to John Scollay on April 30, 1776	15
Samuel Adams, *The Writings of Samuel Adams*, Harry Cushing, Editor (New York: G.P. Putnam's Sons, 1908), Vol. IV, p. 356	6

Cited Authorities

	Page
The Debates and Proceedings in the Congress of the United States (Washington, DC.: Gales & Seton, 1834) Vol. I, pp. 440-948; See also *Wallace v. Jaffree*, 472 U.S. 38, Rehnquist, J. (Dissenting)	12
The Federalist, p. 275, Federalist # 49 by Alexander Hamilton	10
Thomas Jefferson, *Notes on State of Virginia* (Philadelphia: Matthew Cary, 1794), p. 7, Query XVIII	17
Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Ellery Bergh, editor (Washington DC: Thomas Jefferson Memorial Association, 1904) Vol. XV, pp. 331-332, to Charles Hammond on August 18, 1821	13
Trivialization of God by McCullough	21
Wall Street Journal December 1991, http:// www.aidsinfobbs.org/articles/wallsj/91/394) . . .	21
William Findlay, Observations on "The Two Sons of Oill," (Pittsburgh: Patterson in Hopkins, 1812), pp.22-23	8
Witherspoon, *Works* (1815), Vol. IV p. 95, "Seasonable Advice to Young Persons," Sermon XIX, Feb.21, 1762	8
Zephaniah Swift, A System of the Laws of the State of Connecticut (John Byrne, 1795), Vol. I, pp. 6-7	6

TABLE OF APPENDICES

	Page
Family Stability . . . Female Head, No Spouse Present	1a
Morality . . . Sexually Transmitted Diseases: Age Group 10-14	2a
Violent Behavior . . . Number Of Offenses	3a
Morality . . . Birthrates For Unwed Girls: 15-19 Years Of Age	4a
Educational Achievement . . . Sat Total Scores	5a

INTEREST OF AMICI[1]

Faith and Action, Institute in Basic Life Principles, International Reapers Foundation, the National Clergy Council, and Committee of Concerned Citizens representing the voice of literally thousands of citizens across the United States join together in this Amici brief, as they did in *McCreary v. ACLU*, to resist the continuous and expanding efforts to eliminate from our government and public life any recognition of God and his moral law, all under the guise of religious liberty, resulting in the endorsement by government of atheism. This evil menace, like a giant squid, is reaching its tentacles into every aspect of our lives spewing its poison of secular humanism. The moral fabric of our society is slowly being destroyed and atheism, which is anathema to this nation's Declaration of Independence, is being promoted with its secular humanism.

SUMMARY

The brief of Amici filed in *McCreary v. ACLU* contended the Declaration of Independence is the foundational law governing "religious expression," not the First Amendment. Further it is contended that the created characterization "separation of church and state" not only is a misnomer, but has been manifestly misapplied. This brief continues to advocate that hypothesis.

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1. This brief has been authored in its entirety by undersigned counsel for the *amici curiae*. No person or entity, other than the named *amici* and their counsel, made any monetary contribution to the preparation and submission of this brief. The Petitioner has consented to the filing of all briefs. The consent of the Respondent is being lodged herewith.

INTRODUCTION

Since *Everson v. Board of Education*, 330 U.S. 1 (1947) the rhetoric in the decisions seems increasingly to recognize that a conundrum exists. For example in *Abington v. Schempp* 374 U.S. 203, 231 (1963) the court observed that ". . . the fact is that the line which separates the secular from the sectarian in American life is elusive . . ." Justice O'Connor likewise in *Wallace v. Jafree*, 472 U.S. 38 (1985), observed that something more must be done than ". . . erecting a constitutional signpost (citation omitted) to be followed in any particular case in which our predilections may dictate." Justice Kennedy in *Alleghany v. ACLU*, 492 U.S. 573 (1989) complained the endorsement test had to be twisted to avoid inconsistencies with practices permitted in the past ". . . while condemning similar practices with no greater endorsement affect simply by reason of their lack of historical antecedent. (FN 10) Neither result is acceptable."

These Ten Commandment cases must not be viewed as isolated issues with individual solutions. They are actually linked with all the "establishment clause" cases and have a common solution. Unless that common cause is dealt with, this kind of destructive litigation will continue to escalate unabated. The volume of "establishment clause" and related cases has already reached the point it is utterly impossible for this court to properly monitor the results, much less keep pace with the consequence in public life of their rulings. Public officials, including school authorities, have developed their own personal interpretation of court opinions resulting in the imposition of irrational and unconstitutional restrictions. A current illustration of the awesome confusion is demonstrated in the case of *Williams v. Vidmar*, No. CO44946, USDC, N. Dist. San Jose Div. where the use of the Declaration of Independence itself is at issue because of its reference to God. A teacher was prevented from handing

out excerpts on the Declaration of Independence and other historical documents on the role of religion in the nation's history.[2] On the same point of law, *Engle v. Vitale* 370 U.S. 421, 435 n.21 (1962) seems to expound opposing rhetoric:

> . . . [T]here is of course nothing in the decision reached here that is inconsistent with the fact that schoolchildren and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God.

What a tragedy that it becomes necessary to litigate the ability to expound the principles contained in the foundational philosophy of this nation contained in the Declaration of Independence. Without such organizations as Liberty Council, American Center for Law and Justice, and others of similar purpose, how in the world could an individual have the resources and the ability to carry-on the fight for religious freedom?

It is self-evident of course that law is not an abstract proposition; it is designed to govern human behavior. Violation of a law is demonstrated not by argument but by evidence. Again it is axiomatic that one cannot be forced to believe what he does not want to believe, but on the other hand he can be required to behave in a particular way in obedience to the law for the common good of society. Law

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2. A school can hand out condoms, often without the parent's consent, but not the Word of God contrary to the principles in the Declaration of Independence, the foundation of this nation.

consequently constitutes a restriction on an individual's liberty. If the Declaration of Independence contains the moral law which is not being enforced because it is confused with the First Amendment "freedom of religious belief," the result will be an ever increasing extension of immoral license. Depending on the length of time that such confusion exists, there will be evidence of an escalating moral breakdown.

Everson failed to accurately demarcate the boundaries between the moral law of the Declaration, and the "religious doctrinal position" in the First Amendment. In an effort to find a way through the "wilderness" to reach a presumed objective, a "hoped for" solution was engineered. The Court artfully converted the constitutional phrase "Congress shall make no law," to mean that a Priest, Rabbi, or a teacher for example is "Congress," and that the Ten Commandments, a prayer, or carrying a Bible to school, even writing a paper about Jesus Christ in an English class constitutes "a law."

As a result, the Court has created for itself a chimerical task with nothing more tangible to guide them than a "movable metaphor" and a variety of subjective evaluations based upon their own predilections.

OUR PHILOSOPHY OF GOVERNMENT IS GOD'S MORAL LAW

The Declaration of Independence clearly establishes a Philosophy of Government which is the foundation of law in the United States. That law is to be distinguished from the term "religion" as found in the First Amendment. Since the First Amendment cannot be repugnant to the Declaration, it logically follows that the term "religion" must have a meaning different than the provisions of the Declaration. The Declaration in clear unmistakable English states that: "We hold these truths to be self-evident, that all men are

created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty and the pursuit of happiness." That establishes the foundational moral law of this nation. The following from the historical record is consistent with the conclusion that the Declaration was intended to be the law given by a Supreme Being that was superior to and higher than human law.[3]

> All [laws], however, may be arranged in two different classes. (1) Divine. (2) Human. . . . But it should always be remembered that this law, natural or revealed, made for man or for nations, flows from the same Divine source: it is the law of God. . . . Human law must rest its authority ultimately upon the authority of that law which is Divine.[4] (James Wilson)

> [T]he law . . . dictated by God Himself is, of course, superior in obligation to any other. It is binding all over the globe, in all countries, and at all times. No human laws are of any validity if contrary to this.[5] (Alexander Hamilton)

The *Declaration is a legal document, not a document of*

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3. *See* pp. 14, 15, 16, Amici brief filed in McCreary v. ACLU, No. 03-1693 for additional commentary on law.

4. James Wilson, *The Works of the Honorable James Wilson*, Bird Wilson, Editor (Philadelphia: Lorenzo Press, 1804) Vol. 1, pp. 103-105, "Of the General Principles of Law and Obligation."

5. Alexander Hamilton, *The Papers of Alexander Hamilton*, Herald C. Syrett, editor (New York: Columbia University press, 1961) Vol. 1 p. 87, p. 87, Feb 23, 1875, quoting William Blackstone, Commentaries on the Law of England

religion. It is part of the Constitution both in spirit and content. John Adams said: "if 'thou shalt not covet,' and 'thou shalt not steal,' were not Commandments of Heaven, they must be made inviolable precepts in every society, before it can be civilized or made free."[6] Modern day courts have confused the term "religion" with the content of the Declaration pertaining to God and His Laws... The phrases in the Declaration, "laws of nature" and "nature's God" were chosen because they conveyed a precise and universally understood meaning and clearly defined in Blackstone.[7] That those terms are rooted in God's word are not really debatable.

John Jay, first Chief Justice of the Supreme Court, said ". . . Natural law was given by the Sovereign of the universe to all mankind."[8] Zephaniah Swift who wrote America's first law text agreed stating: "The . . . Supreme Deity . . . [Gave] those general and immutable laws that will regulate their operation through the endless ages of eternity . . . are denominated the laws of nature."[9] Samuel Adams contributed: "All men . . . are equally bound by the laws of nature, or to speak more properly, the laws of the Creator."[10] Noah Webster commented that the ". . . 'law of nature' is a

6. John Adams, *A Defense of the Constitution of Government of the United States of America* (Philadelphia: William Young, 1797), Vol. III, p. 217.

7. James Iredell's Charge to the Grand Jury in the *Case of Fries* [9 Fed. Cas. No. 5,126, (C. C. D. Pa. 1799).

8. John Jay, *The Life of John Jay*., William J., Editor (New York: J& J. Harper, 1833), Vol. II, p. 385.

9. Zephaniah Swift, A System of the Laws of the State of Connecticut (John Byrne, 1795), Vol. I, pp. 6-7.

10. Samuel Adams, *The Writings of Samuel Adams*, Harry Cushing, Editor (New York: G.P. Putnam's Sons, 1908), Vol. IV, p. 356.

rule of conduct . . . established by the Creator . . . denominated in Scripture . . ."[11]

James Wilson, a signer of the Constitution said: ". . . human law must rest its authority ultimately upon the authority of that law which is Divine."[12] Rufus King added his additional comment: ". . . Law established by the Creator, which has existed from the beginning . . . [Is] binding upon mankind . . . [This] is the law of God by which He makes his way known to man and is paramount to all human control."[13]

Were the Ten Commandments considered part of that moral law of God? John Quincy Adams said that ". . . [T]he law given from Sinai was civil and municipal . . . as well as a moral and religious code . . . [it was] essential to the existence of men in society and most of which have been enacted by every nation which ever professed any code of laws[14] . . . It would be a vain search among the writings of profane antiquity . . . to find so broad, so complete and so solid a basis for morality as this Decalogue lays down."[15] William Findley who served in Congress when John Quincy Adam's father was President corroborated what was just said: ". . . This law, which is commonly called the Ten

11. Hamilton, *Papers*, Vol. I p. 87, February 23, 1775, quoting from Blackstone.

12. James Wilson, *The Works of the Honorable James Wilson*, Bird Wilson, Editor (Philadelphia: Lorenzo Press, (1804), Vol. I, pp. 103-105, "*Of the General Principles of Law and Obligation.*"

13. Rufus King, *The Life and Correspondence of Rufus King*, Charles R. King, Editor (New York: G.P. Putnam's Sons, 1900), Vol. VI, p. 276.

14. John Quincy Adams, *Letters . . . To His Son*, p. 61

15. John Quincy Adams, *Letters . . . To His Son*, Pp. 70-71.

Commandments or Decalogue . . . was in fact incorporated into the judicial law."[16]

John Witherspoon, a signer of the Declaration, said: "The Ten Commandments . . . are the sum of the moral law . . ."[17] Noah Webster said: "The opinion that human reason left without the constant control of Divine laws and commands will . . . give duration to a popular government is as chimerical as the most extravagant ideas that enter the head of a maniac. . . ."[18] James McHenry, a signer of the Constitution; Robert Winthrop, a speaker the House of Representatives; Daniel Webster; David Ramsey, a member of the Continental Congress; Dwight Clinton , who drafted the 12th amendment, among others agreed the Ten Commandments represent the substance of the moral law.

Daniel Webster argued by implication in the case of *Vidal v. Gerard's Executors*, 43 U.S. 126,175 (1844) that not only should the Ten Commandments be displayed, but their teaching should be a part of the moral instruction to prevent national moral decay:

> Both in the Old and New Testaments its importance [i.e., the religious instruction of youth] is recognized. In the Old it is said: Thou shall diligently teach them to thy children.

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16. William Findlay, Observations on "The Two Sons of Oill," (Pittsburgh: Patterson in Hopkins, 1812), pp. 22-23.

17. Witherspoon, *Works (*1815), Vol. IV p. 95, "Seasonable Advice to Young Persons," Sermon XIX, Feb. 21, 1762.

18. Noah Webster, *Collection of Papers*, pp. to 91-292, from his Reply to a Letter of David McClure on the Subject of the Proper Course of Study in the Girard College, Philadelphia. New Haven, October 25, 1836.

THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION ARE ONE HARMONIOUS DOCUMENT

It is well established that the Declaration of Independence and the Constitution constitute one harmonious document. The Constitution, built upon the foundational principles of the Declaration, is designed to protect the rights established in the Declaration and shall not violate the provisions of the Declaration. John Quincy Adams made this extraordinarily clear in a speech he delivered at the New York Historical Society on April 30, 1839:

> The Declaration was America's charter . . . the act [Constitution] . . . forming with it one entire system of national government . . . All this is by the Laws of Nature and of Nature's God, which of course presuppose the existence of a God, the moral ruler of the universe in a rule of right and wrong, of just and unjust, binding upon men, preceding all institutions of human society and of government . . . now the virtue which had been infused into the Constitution of the United States, and was to give to it its vital existence, the stability and duration to which it was destined, was no other than the concretion of those abstract principles *which had been first proclaimed in the Declaration of Independence-namely, the self-evident truths of the natural and unalienable rights of man . . . always subordinate to . . . the Supreme Ruler of the universe . . . that was the platform upon which the Constitution of United States had been erected . . . consisted in its conformity to the principles proclaimed in the Declaration of Independence. . . .*

(Emphasis added).

Alexander Hamilton concurred saying the Constitution is nothing but the body and letter of the Declaration which is its thought and spirit.[19] He added that the law was dictated by God Himself and that no human law was of any validity contrary to God's law.[20]

In a turn-of-the-century case the court held: "The latter [Constitution] is but a body and the letter of which the former [Declaration of Independence] is the thought and the spirit, and it is always safe to read the letter of the Constitution in the Spirit of the Declaration of Independence." *Gulf, Colorado and Santa Fe Railroad Co. v. Ellis*, 165 U.S. 150, 160 (1897).

Justice Douglas in *McGowan v. State of Maryland*, 366 U.S. 420 (1961) reiterated the well established conclusion that there is a higher authority than that of the State, and a ". . . moral law which the State is powerless to alter . . . ," and that the "principles" of the Declaration are enshrined in the Constitution and the Bill of Rights.

In his speech at "The Jubilee of the Constitution" John Quincy Adams made it clear that the Constitution was to operate on the principles declared in the Declaration of Independence stating:

> [T]he virtue which had been infused into the Constitution of the United States . . . was no other than the concretion of those abstract principles which have been first proclaimed in the Declaration of Independence. . . .This was the

19. *The Federalist*, p. 275, Federalist # 49 by Alexander Hamilton.

20. Alexander Hamilton, *The Papers of Alexander Hamilton*, Harold C. Syrett, Editor (New York: Columbus University Press, 1961), Vol. I , p. 87, February 23, 1775

> platform on which the Constitution of the United States had been erected. . . . [And] was to depend upon the . . . principles proclaimed in the Declaration of Independence and embodied in the Constitution the United States.[21]

President Lincoln, after reciting the provisions of the Declaration, stated the same obvious conclusion:

> . . . They erected a beacon to guide their children, and their children's children, [T]hey established these great self-evident truths that . . . their posterity might look up again to the Declaration of Independence and take courage to renew that battle which their fathers began, *so that truth and justice and mercy and all the humane and Christian virtues might not be extinguished from the land. . .*[22]

(Emphasis supplied).

THE "WALL" IS IN THE WRONG PLACE

What an interesting discussion that would be with President Jefferson concerning his letter to the Danbury Baptists. In my imagination I could hear him saying that he wanted to clear up the misunderstanding. The interpretation given to his letter was an explicit contradiction of the Declaration's Philosophy of Government which he had so carefully and laboriously drafted. The wall described in his

21. John Quincy Adams, *The Jubilee of the Constitution* (New York: Samuel Coleman, 1839), p. 54.

22. Abraham Lincoln, The Works of Abraham Lincoln: Speeches and Debates, John H. Clifford, Editor (New York: the University Society Inc., 1908), Vol. III, pp. 126-127, August 17, 1858.

letter *had been erected by the court in exactly the wrong place*. His "wall" was *not* intended to prevent the free exercise of religion, rather Jefferson would say he was making it very clear that the metaphor he was using was specifically intended to illustrate that *government could not in any way prohibit the free exercise of religion.* That the letter was written to a particular denomination further underscores the fact that "religion" as used in the First Amendment is of denominational derivation.

It thus becomes mandatory to secern that the created term "separation of church and state" not only constitutes a constitutional misnomer, but in addition has been grossly misapplied.

Mr. Jefferson would most certainly observe that he and James Madison had gotten a lot of attention they did not deserve. There were 90 representatives in Congress that adopted the Bill of Rights. Reading the modern-day opinions, however, it would appear that Madison and Jefferson alone were responsible for drafting a Bill of Rights.[23] The fact of the matter is that Jefferson was in France and took no part in either the adoption of the Constitution or the Bill of Rights. Ironically, Mr. Madison described as almost solely responsible for drafting the First Amendment was initially opposed to the Bill of Rights. He ultimately agreed realizing the Constitution would not be adopted without one, but very few of his suggestions made it into the final version of the First Amendment[24]

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23. I do not recall ever seeing in a decision the names of George Mason or Fisher Ames who were primarily responsible for the Bill of Rights.

24. *The Debates and Proceedings in the Congress of the United States* (Washington, DC.: Gales & Seton, 1834) Vol. I, pp. 440-948; See also *Wallace V. Jaffree*, 472 U.S. 38, 93-99, Rehnquist, J. (Dissenting).

Remembering the case of *Marbury v. Madison*, Jefferson might humorously observe to Judge Marshall, "That's the problem with judges, they can twist a clear expression into something that creates a major problem," and then comment:

> It has long, however, been my opinion, and I have never shrunk from its expression . . . that the germ of dissolution of our Federal Government. . . . Is in the constitution of the federal Judiciary; working like gravity by night and by day, gaining a little to day and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped.[25]

A glaring inconsistency in the current establishment clause conclusions must readily be admitted when on August 7, 1789, at the same time the Bill of Rights was being sent to the states for approval, President Washington signed into law the Northwest Ordinance. The Ordinance contained only one section which addressed *both* religion and public education, and actually coupled them legally together in the same Article III:

> Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

The Declaration of Independence, Articles of Confederation, the Northwest Ordnance, and the Constitution are recognized as the *organic laws* of this nation in the *United States Code Annotated*.

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25. Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Ellery Bergh, editor (Washington DC: Thomas Jefferson Memorial Association, 1904) Vol. XV, pp. 331-332, to Charles Hammond on August 18, 1821.

The "moral law" in the Declaration, must be clearly distinguished from the term "religion" in the First Amendment. If that distinction is not made, a constitutional conflict is arbitrarily created. In the words of an old song "pandemonium is liable to walk upon the scene." Since a constitutional conflict cannot legally exist except by misinterpretation, to restore constitutional harmony, it becomes essential that the "location" of the "wall" be moved to make sure that the Federal government does not in any way interfere with the "free exercise of religion."

THE WARNING

A clause in the Declaration that had profound significance for the Founders and is equally applicable to each one of us today, is the phrase used by the founders, ". . . Supreme Judge of the world for the rectitude of our intentions [an old English word meaning 'moral uprightness']. . . ." It is not mere historic rhetoric in an historic document. It contains an ominous warning that we ignore at our peril. The time is already very late.

That phrase actually anchors the legal conclusion that the Declaration is to govern the decisions on what are characterized as "establishment clause" cases, not the First Amendment. The portion of the phrase, "rectitude of our intentions," coupled with "Supreme Judge of the world," represents that God will judge a nation or an individual on His absolute standard of morals. It is thus incumbent for this nation to proclaim publicly the moral principles contained in the Declaration. There is no court decision that can alter God's judgment to which the court itself is subject. It is not man's law that is being dealt with by a court, it is God's law. This is serious business. The Founders understood that the phrase, "Supreme Judge of the world," established the reality of eternal judgment. It was the specter of judgment on which

their oath of office was taken. The founders understood that they would ultimately stand in judgment based upon those moral laws.

A House Judiciary Committee declared: "Laws will not have permanence or Power without the sanction of religious sentiment—without a firm belief that there is a Power above us that will reward our virtues and punish our vices."[26]

In an argument before the Supreme Court, Daniel Webster stated: "What is an oath? [I]t is founded on a degree of consciousness that there is a Power above us that will reward our virtues or punish our vices. . . . [O]ur system in all our courts, by which we hold liberty and property and all our rights, are founded on or rest on Christianity and a religious belief."[27]

Samuel Adams explained: [Divine] Revelation assures us that "righteousness exults a nation" [Proverbs 14:34]. Communities are dealt with in this world by the wise and just Ruler of the Universe. He rewards or punishes them according to their general character."[28] George Mason, the father of the Bill of Rights, reminded the delegates at the Constitutional Convention: "as nations cannot be rewarded or punished in the next world, so they must be in this. By an

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26. *Reports of Committees of the House*, p. 8.

27. Daniel Webster, Mr. Webster's *Speech in Defense of the Christian Ministry and in Favor of the Religious Instruction of the Young*, Delivered in the Supreme Court of the United States, February 10, 1844 in the Case of Stephen Girard's Will (Washington: Gales and Seton, 1844), Pp. 43, 51.

28. Samuel Adams, *The Writings of Samuel Adams*, Harry Alonzo Cushing, Editor (New York: G.P. Putnam's Sons, 1907), Volition, p. 286, to John Scollay on April 30, 1776.

inevitable chain of causes and effects, Providence punishes national sins by national calamities.[29]

Speaking before the Massachusetts Legislature in 1791, Chandler Robbins declared:

> The Supreme Governor of the World rewards or punishes nations and civil communities only in this life. . . . Political bodies are but the creatures of time. They have no existence as such but in their present State; consequently, are incapable of punishments or rewards in the future. We can conceive no way in which the Divine Being shall therefore manifest the purity of His nature . . . toward such societies but by rewarding or punishing them here, according to their public conduct.[30]

President George Washington warned this nation in his "Inaugural Address" of that principle: "The propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven Itself has ordained."[31]

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29. James Madison, *The Papers of James Madison*, Henry Gilpin, Editor (Washington: Langtree and O'Sullivan, 1840), Vol. III p. 1391, August 22, 1787.

30. Chandler Robbins, *A Sermon Preached before His Excellency John Hancock, Governor et al.* (Boston: Thomas Adams, 1791), p. 32.

31. *American State Papers: Documents Legislative and Executive of the Congress of the United States* (Washington: Gales and Seton, 1833), Vol. I, pp. 9-10, April 30, 1789.

President Thomas Jefferson cautioned:

> I tremble for my country when I reflect that God is just: His justice cannot sleep for ever.[32]

This was the punishment of God against a nation or an individual who violated His moral law. No matter what an individual might believe, death is inevitable for everyone, as well as future reward or judgment. How each individual deals with his eternal destiny is a religious matter and protected against encroachment or control by the federal government. The moral law of God as expressed in the Declaration of Independence is to be proclaimed in public life as a moral standard which is to govern individuals. Fisher Ames, who was the author of the House language of the First Amendment said: "Government . . . is a firm compact sanctified from violation by all the ties of personal honor, morality, and religion."[33] Charles Carroll, a signer of the Declaration, said: "Without morals the republic cannot subsist any length of time. . . ."[34] Oliver Ellsworth, Chief Justice of the U.S. Supreme Court, said: [T]he primary objects of government are the peace, order and prosperity of society . . . in a republican government good morals are essential."[35] Benjamin Franklin said: "[O]nly a virtuous people are capable of freedom. As nations become corrupt

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32. Thomas Jefferson, *Notes on State of Virginia* (Philadelphia: Matthew Cary, 1794), P. 237, Query XVIII.

33. Fisher Ames, *The Works of Fisher Ames*, Seth Ames, Editor (Indianapolis: Liberty Classics, 1983), Vol. I, p. 67.

34. Bernard C. Steiner, *The Life and Correspondence of James McHenry* (Cleveland: The Boroughs Bros. Co., 1907), p. 475, Charles Carroll to James McHenry on November 4, 1800.

35. *Connecticut Courant*, June 7, 1802, p. 3.

and vicious, they have more need of masters."[36] George Mason called the father of the Bill of Rights said: ". . . Justice and virtue are the vital principles of Republican government."[37]

Those warnings are for us today. They are very modern. They echo in the chambers of our modern-day minds and clamor for our attention. The evidence of moral collapse is all about us. We refuse to listen to these warnings at our peril. It is very late.

Here are some comparisons of court decisions on morals in the 1800's and modern-day jurisprudence. In 1985, Cassie Grove, a high school sophomore, had been required to read *A Learning Tree* for her English Literature class. She objected to being forced to read several portions. The court in *Grove v. Mead School District*, 753 F.2d 1528 (9th Cir. 1985), *cert. denied*, 474 U.S. 826, ruled against her and found that students taking that class would be required to read the book containing much offensive language including the following:

> Declaring Jesus Christ to be a 'poor white trash God,' or 'a long legged white son-of-a-b__h.'

In *People v. Ruggles*, 8 Johns 545 (Sup. Ct. NY. 1811) Ruggles had used the following language: "Jesus Christ was a bast__d, and his mother must be a whore." The court found Ruggles guilty and said:

> Such words . . . were an offense at common law . . . [I]t tends to corrupt the morals of the people, and to destroy good order. Such offenses . . . are treated as affecting the essential interests of civil society.

36. Benjamin Franklin, *The Works of Benjamin Franklin*, Jared Sparks, editor (Boston: Tappan, Whitmore and Mason, 1840), Vol. X, p. 297, to Messrs. The Abbes Chalut and Arnaud on April 17, 1787.

37. Henry, *Correspondence*, Vol. II, p. 185, from George Mason to Patrick Henry, May 6, 1783.

In *Cohen v. California*, 403 U.S. 15, 18, 20, 25 (1971) Cohen wore a jacket bearing the words "F___the Draft" in a corridor of the Los Angeles Courthouse. The California statute which prohibited the public use of such words was found unconstitutional as violating his freedom of expression guaranteed by the 1st and 14th Amendment. The court found this was not an obscenity case and although "the air may at times seem to be filled with verbal cacophony . . . in this sense it was not a sign of weakness but of strength."

In contrast, the Supreme Court in *People v. Ruggles*, *supra.* (1811) stated:

> Nothing could be more offensive to the virtuous part of the community or more injurious to the tender morals of the young, than to declare such profanity lawful . . . and shall we form an exception in these particulars to the rest of the civilized world?

In the case of *Erznoznik v. City of Jacksonville*, 422 U.S. 205, (1975) the city of Jacksonville was seeking to restrict adult movies shown in a public drive-in theater because the screen was facing a church and two public streets frequented by children. The Supreme Court striking down the ordinance explained that it could not ". . . be justified as an exercise of the [city] . . . for the protection of children."

In direct contrast, *Commonwealth v. Jesse Sharpless and Others*, 2 Surge. & R. 91, 103, 104 (Sup. Ct. Penn. 1815) the court came to the exact opposite decision:

> The destruction of morality renders the power of the government invalid . . . The corruption of the public mind, in general, and debauching the manners of youth, in particular, by lewd and

> obscene pictures exhibited to view, must necessarily be attended with the most injurious consequences. . . . No man is permitted to corrupt the morals of the people.

Evil does not stand still. In today's society pornography and child pornography are rampant. Current news reports state that a study shows that oral sex is rampant in the grade schools. In light of the moral mess in our school system, and with the apparent inability to confront young people with God's moral standards of life, the statistics in the appendix ought to be convicting of the need to reestablish publicly the foundational principles contained in the Declaration and rule that a display of the Ten Commandments, Bible reading, prayer, and the ability to teach the historic record of the place that Christian principles played in the development and founding of this nation is consistent with the principles of the Declaration. The words of the Supreme Court in *Stone v. Graham*, 449 U.S. 39 (1980) haunt my mind when in contrast to what is being permitted in the public schools the court said that a display of the Ten Commandments was unconstitutional because students might read, meditate upon, respect, or obey them. A recent article by the Associated Press stated that according to the American Medical Association, "sweet alcoholic drinks" were being aggressively marketed to young people and are luring troubling numbers of adolescents-especially girls-to engage in drinking. A nationwide poll by the AMA of 741 12 to 18-year-olds found that 31% of the girls and 19% of the boys had consumed these drinks.

Grotesque nudity is displayed on TV where it can be seen by children. Filthy videos can be purchased, all apparently under the guise of freedom of expression. Just recently in two separate nationally televised football games on primetime when children could be watching, two instances of sexually provocative nudity were displayed.

The Trivialization of God by McCullough at page 90 contains an article from the *New York Times*:[38]

> Sin isn't something that many people, including most churches, have spent much time talking about or worrying about through the years of the (cultural and sexual) revolution. But we will say this for sin; it at least offered a frame of reference for personal behavior. When the frame was dismantled, guilt wasn't the only thing that fell away; we also lost the guide-wire of personal responsibility . . . Everyone was left on his or her own. It now appears that many wrecked people could have used a road map.

God's laws are superior and cannot be rationalized. The content of the Declaration of Independence established unconditionally that ". . . all men are created equal . . ." Slavery was a rank violation of moral law established in the Declaration. In the case of *Dread Scott v. Sandford*, 60 U.S. 393 (How.) (1856) the court rationalized that provision holding it did not apply to ". . . the enslaved African race . . ." God's retribution to this nation for that violation was a bloody civil war, the consequences with which this nation still lives. Apparently we have not gotten the message as courts continue to violate the Declaration by extracting God and his principles from our public life.

We are on a disastrous course. A modern day comparison is contained in the Nuremberg trials. At the end of World War II, Associate Justice Robert Jackson of the United States Supreme Court was appointed by President Truman as the chief prosecutor for the United States at Nuremberg;[39] the prosecution

38. It originally appeared as an editorial in the *Wall Street Journal* December 1991, http://www.aidsinfobbs.org/articles/wallsj/91/394).

39. See the Nuremberg trial record from which these comments are taken.

of the Nazi war criminals was predicated on the fact that a Supreme Being had established absolute laws that transcended human laws. The defense of expo-facto by the Nazis was that they were simply obeying the laws of their government. They were found guilty of crimes against humanity as charged in the indictment based upon God's absolute moral laws to which human laws must bow.

There appears to be a distinct parallel between Nuremberg and those who oppose the public expression of the moral laws of God, including the Ten Commandments, as contained in the Declaration of Independence. The following illustrations are taken from the actual Nuremberg trial record for comparative purposes. (All emphasis have been supplied)

- ". . . Religious persecution was cloaked in the language of *religious liberty* . . ."

- "The Nazi party was always predominantly *anti-Christian in its ideology*. . . ."

- ". . . *Educational institutions* were suppressed or *subjected to* requirements of Nazi *teaching inconsistent with the Christian faith*."

- ". . . The law was what the Nazis said it was. . . ."

- ". . . Conduct which is a crime in the moral sense must be regarded as innocent in law"

- "More and more of the people must be separated from the churches . . . This influence must be broken completely and finally. . . . Not until this has happened, does the State leadership have influence on the individual citizens"

- "[The Nazi] program must reckon with the opposition of the Christian Church . . . 'national socialism and Christian concepts are irreconcilable' and the people must be separated from the churches and *the influence of the churches totally removed*."

(All emphasis have been supplied).

The following is a pertinent part of Justice Jackson's opening statement:

> . . . [W]hat makes this inquest significant is that these prisoners represent sinister influences . . . that will work in the world long after their bodies have returned to dust . . . they took from the German people all those dignities and freedoms that we hold as our *natural and unalienable rights in every human being*. . . .Civilization can afford no compromise with the *social forces* which would gain renewed strength if we deal generously or indecisively with the man in whom those forces now precariously survive.

The case law of today certainly indicates we are on a similar ideological course accompanied by evidence of increasing moral decay.

With man's disposition to live selfishly he needs to be reminded of God's law and the consequences for disobedience. As part of his daily education, man needs to be reminded of the principles contained in our Declaration. The prominent display of the Ten Commandments is an adjunct to achieving that moral review.

Alexander Hamilton implied we needed the foundational principles established in the Declaration when he stated: "Why has government been instituted at all? Because the passions of man will not conform to the dictates of reason and justice without constraint. . . ."

CONCLUSION AND SOLUTION

The foundational principles of the Declaration of Independence have been violated by excluding the Ten Commandments from public display. The decision should not rest on historical evidence, or whether or not in the "opinion" of the Court they do or do not represent a secular purpose. Their display is authorized consistent with the foundational Philosophy of Government of the United States. The continued erosion of God and His moral principles from our society is creating a religion of atheism and its consequent secular humanism. Compliance is being required on order of the court with punishment resulting from violation of that order. It is not "religion" at issue; it is God's moral law. At stake is the moral survival of this nation. We are in the process of leaving a Legacy to a wonderful generation of young people coming down the trail. What will it be? Rev. Matthias Burnett in 1803 charged:

> Finally, ye . . . whose high prerogative it is to . . . invest with office and authority or to withhold them and in whose power it is to say or destroy your country, consider well the important trust . . . which God . . . [has]put into your hands. To God and posterity you are accountable for them. . . . Let not your children have reason to curse you for giving up those rights and frustrating those institutions which our fathers delivered to you.[40]

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40. Burnett, pp. 26-27.

On a suggested solution, please see the "Conclusion and Suggested Solution" in our Amici brief in McCreary on pp. 24, 25. It will require a change in paradigm but the "wall of separation between church and state" should be redefined as preventing the government from interfering with, or restraining, the freedom to express in public life our Philosophy of Government.

Respectfully submitted,

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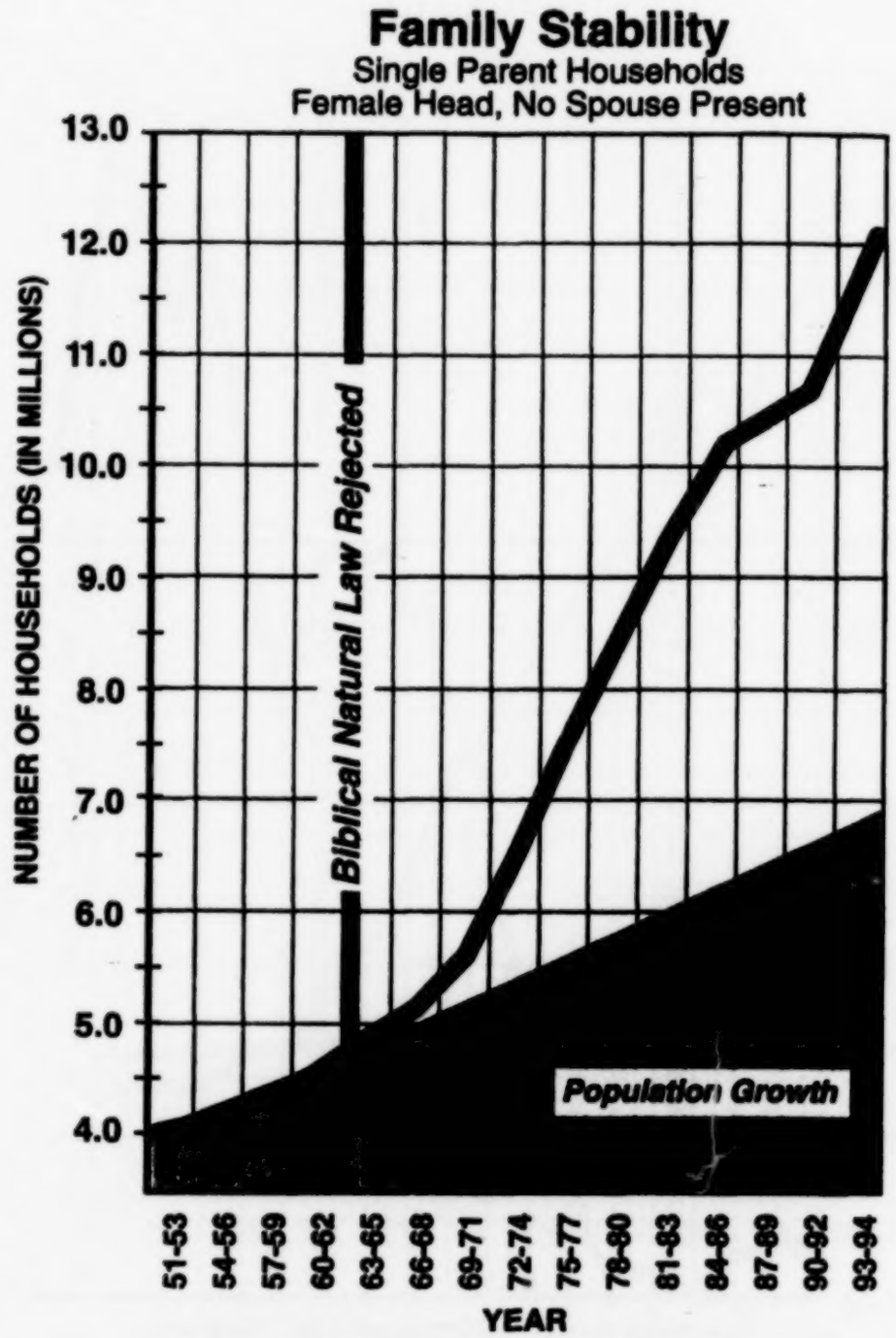
APPENDIX

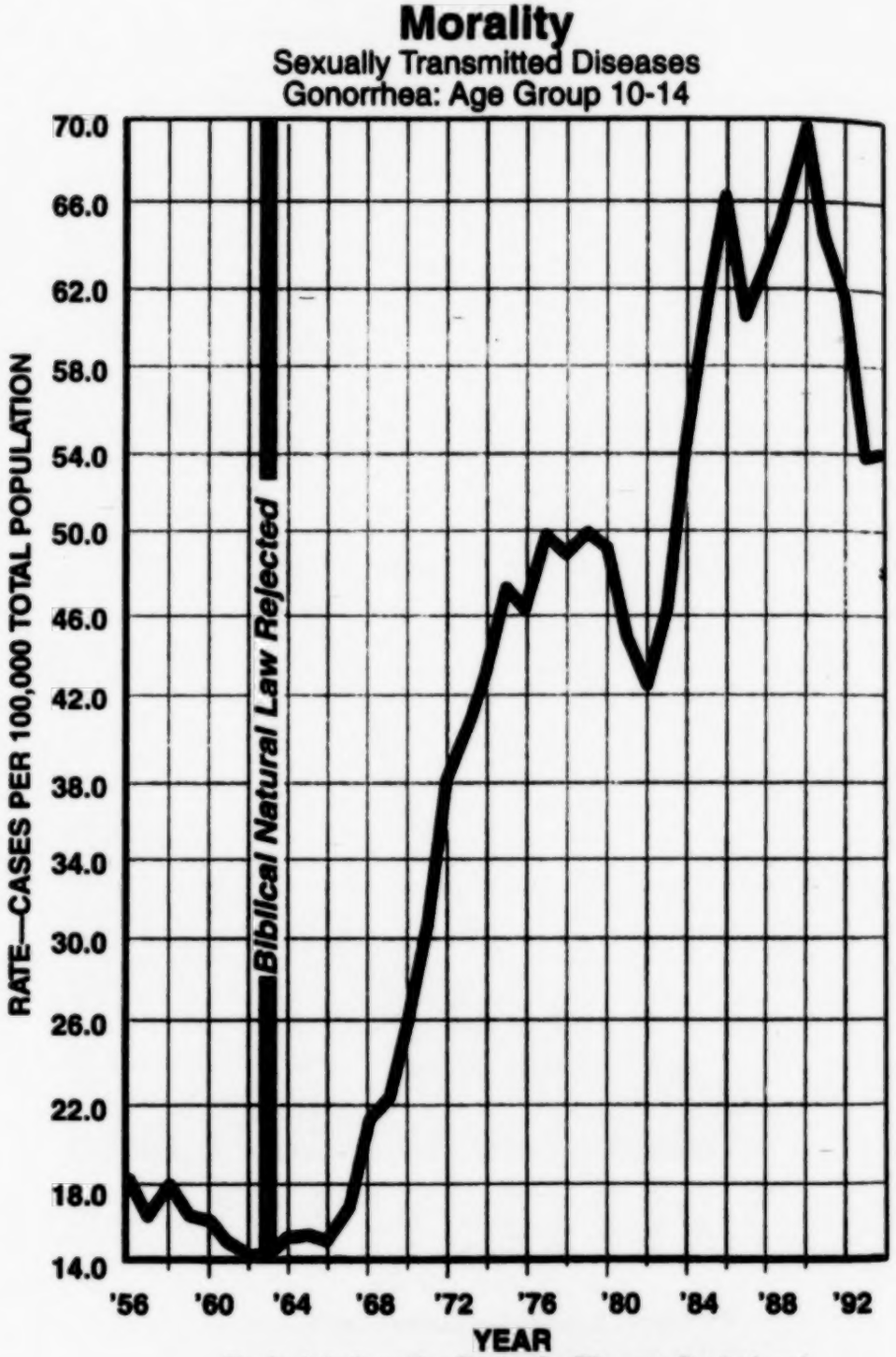
FAMILY STABILITY . . . FEMALE HEAD, NO SPOUSE PRESENT



Indicates population growth profile.

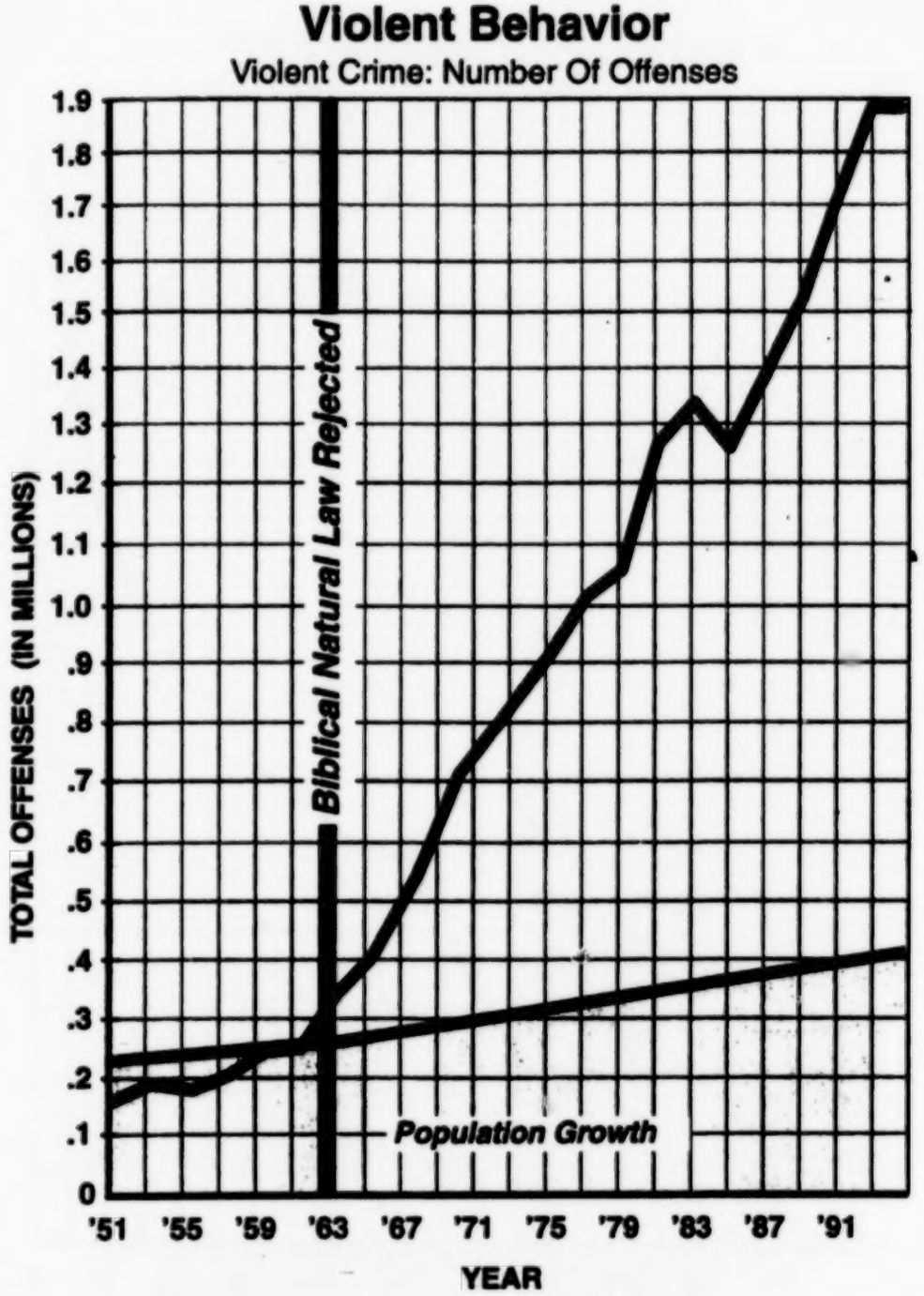
Basic data from *Statistical Abstract of the United States*, and the Department of Commerce, Census Bureau.

MORALITY . . . SEXUALLY TRANSMITTED DISEASES: AGE GROUP 10-14



Basic data from the Center for Disease Control and Department of Health and Human Resources.

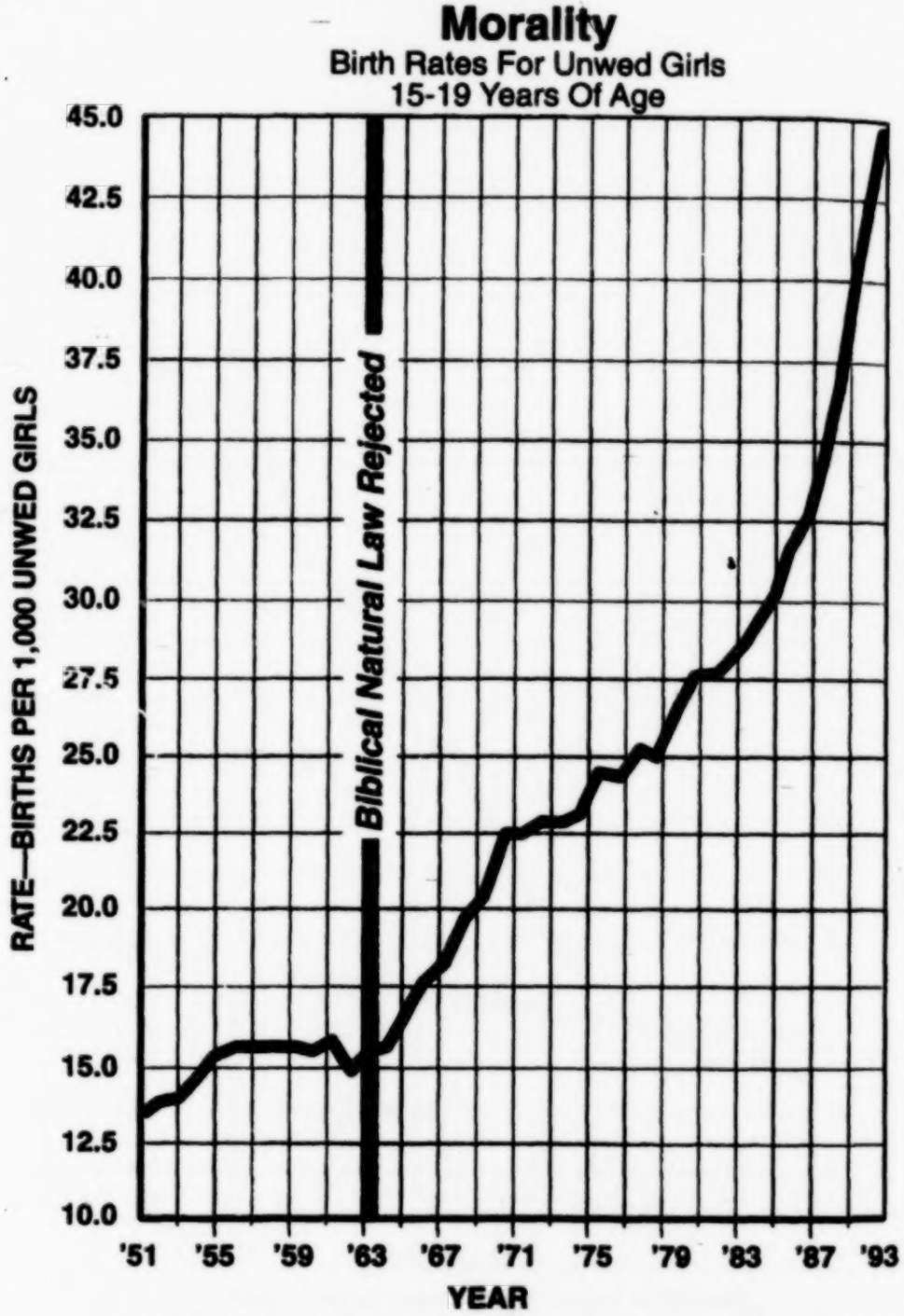
VIOLENT BEHAVIOR . . . NUMBER OF OFFENSES



Indicates population growth profile.

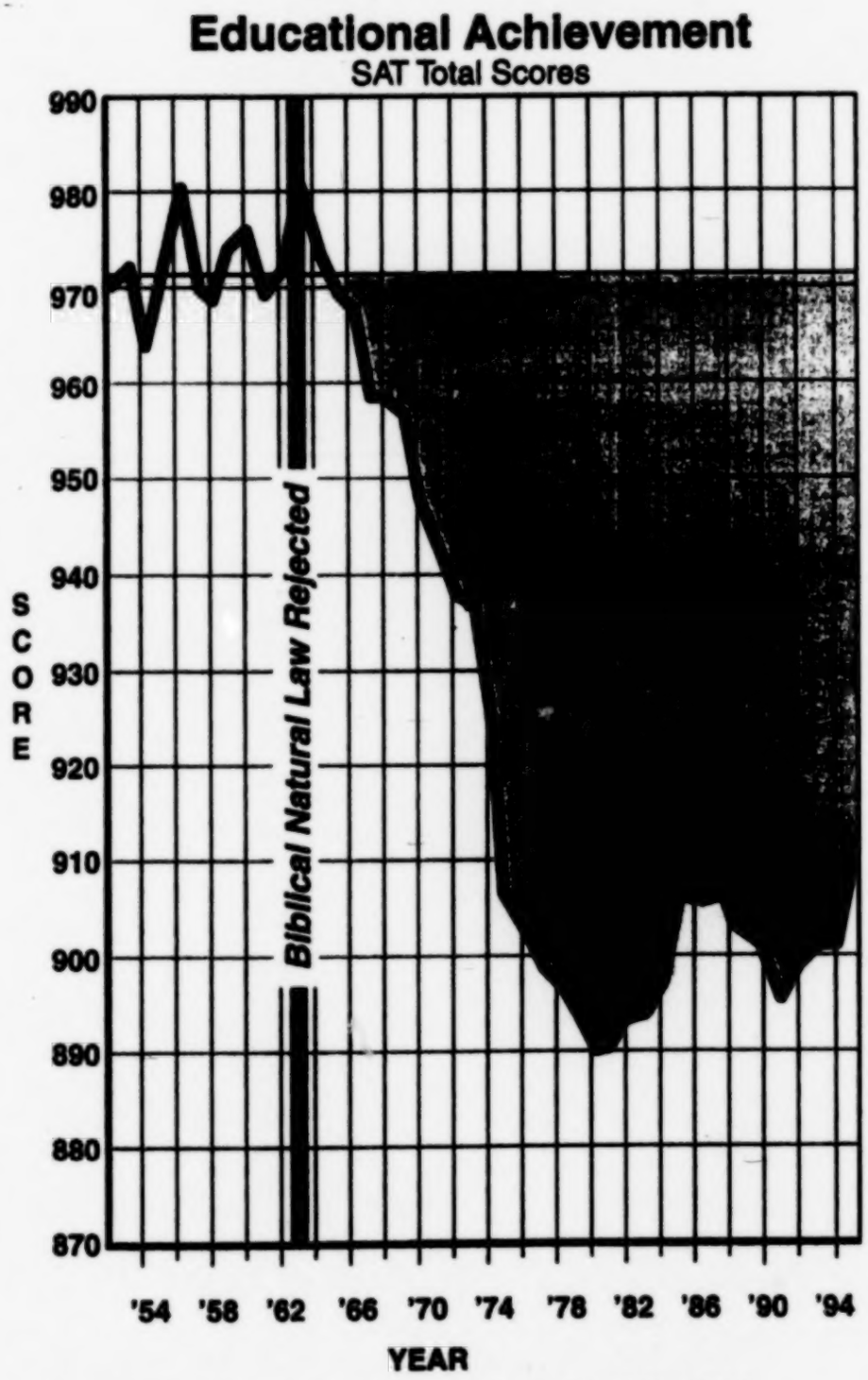
Basic data from *Statistical Abstract of the United States*, and the Department of Commerce, Census Bureau.

MORALITY . . . BIRTHRATES FOR UNWED GIRLS: 15-19 YEARS OF AGE



Basic data from Department of Health and Human Services and *Statistical Abstract of the United States.*

EDUCATIONAL ACHIEVEMENT . . . SAT TOTAL SCORES



Basic data from the College Entrance Exam Board, New York.